

Update: Adoption Proceedings Benchbook

CHAPTER 2

Freeing a Child for Adoption

2.13 Termination Pursuant to a Step-Parent Adoption

B. Case Law Interpreting MCL 710.51(6)

On page 62 insert the following case summary before the summary of *In re Martyn*:

♦ *In re Eickhoff*, ___ Mich App ___ (2004)

The mother's parental rights were terminated pursuant to MCL 710.51(6). On appeal, the mother claimed that the trial court's finding that she regularly and substantially failed or neglected to visit, contact, or communicate with the child was erroneous because the father prevented her from having regular contact with the child. The Court upheld the termination of parental rights and distinguished this case from *In re ALZ*, 247 Mich App 264 (2001), because in this case the mother had visitation rights ordered in the divorce decree but she did not seek assistance from the Friend of the Court or the divorce court to enforce those rights.

The mother also claimed that the trial court erred by looking at her ability to pay support when the divorce decree indicated that support was "reserved." The Court of Appeals acknowledged that it had previously held that a trial court considering an adoption petition under MCL 710.51(6) cannot look at the parent's ability to pay when a support order exists. However, the Court of Appeals distinguished this case from one in which a parent has been ordered to pay a specific amount, and the trial court ignores that order and relitigates a parent's ability to pay. The Court stated:

"In reviewing both the statutory language and the pertinent published decisions, we also conclude that the relevant sections of MCL 710.51(6) are essentially yardsticks to be used to measure the noncustodial parent's interest in being a parent as it pertains to permitting termination of his/her parental rights. But, to be an

effective yardstick, the test must measure something; therefore, if an order *reserving or holding in abeyance* the establishment of a sum of money for support is a ‘support order’ within the meaning of the second clause of subsection 6(a), that measure is meaningless. . . . Thus, we find that the plain language of the provision of the divorce decree in the instant case pertaining to support and the use of common sense require a conclusion that respondent was not ordered to pay child support. Indeed, the court ‘reserved’ the issue for another time because at the time of the divorce decree respondent was unemployed. Consequently, because the court *did not set forth some sum of money that respondent* was required to pay for child support, there is no support order in place *under the circumstances of this case*, and the trial court properly inquired as to respondent’s ability to support her child under the first clause of subsection 6(a).” ___ Mich App at ___. (Emphasis in original.)

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2.16 Special Notice Provisions for Incarcerated Parties

On page 70, at the end of the first paragraph in this section, insert the following text:

MCR 2.004(A) states that it applies to one of the specifically enumerated actions “in which a party is incarcerated under the jurisdiction of the Department of Corrections.” In *In re Davis*, ___ Mich App ___, ___ (2004), the Court indicated that “Department of Corrections” refers only to the Michigan Department of Corrections. Therefore, MCR 2.004 does not apply to parties incarcerated in another state who are not subject to the jurisdiction of the Michigan Department of Corrections.